

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VA
RICHMOND DIVISION

IN RE:
RICHARD EARL SOUELS
Debtor(s)

BCN#: 09-38062\DOT
Chapter: 13

GMAC MORTGAGE, LLC
or present noteholder,
Movant/Secured Creditor.

v.
RICHARD EARL SOUELS
Debtor(s)
and
CARL M. BATES
Trustee
Respondents

MOTION FOR ORDER GRANTING
RELIEF FROM AUTOMATIC STAY AND
NOTICE OF MOTION AND HEARING

GMAC MORTGAGE, LLC, and/or present noteholder, (Movant herein), alleges as follows:

1. The bankruptcy court has jurisdiction over this contested matter pursuant to 28 U.S.C. Sections 157, and 1334; 11 U.S.C. Section 362; Federal Rule of Bankruptcy Procedure 9014; and Local Bankruptcy Rule 4001(a)-1.

2. The above named Debtor(s) filed a Chapter 13 Petition in Bankruptcy with this Court on December 9, 2009.

3. CARL M. BATES has been appointed by this Court as the Chapter 13 Trustee in this instant Bankruptcy proceeding.

4. Movant is the current payee of a promissory note secured by a deed of trust upon a parcel of real property with the address of 2806 4TH AVE, Richmond, VA 23222 and more

EDWARD S. JONES, VSB# 77729
Attorney for GMAC Mortgage, LLC
SHAPIRO & BURSON, LLP
236 CLEARFIELD AVENUE, SUITE 215
VIRGINIA BEACH, VA 23462
(757) 687-8777

09-169446D

particularly described in the deed of trust dated August 26, 2005 and recorded at Deed Book/as Instrument number 050034397, among the land records of the said city/county, as:

ALL THAT PARCEL OF LAND IN THE CITY OF RICHMOND, COMMONWEALTH OF VIRGINIA, AS MORE FULLY DESCRIBED IN DEED DOC # 03011665, IE# N000-0810-007, BEING KNOWN AND DESIGNATED AS: PLAT IS RECORDED IN MAP BOOK 363 AT PAGE 61 REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF THE PROPERTY: SURVEY MADE BY ROBERT K. THOMAS AND ASSOCIATES, DATED 06/20/1997, ENTITLED: SURVEY 7 MAP OF LOTS 23, 24 & 26, BLOCK 6, PLAN OF THE PLATEAU IN RICHMOND, VA.

5. Movant is informed and believes, and, based upon such information and belief, alleges that title to the subject Property is currently vested in the name of the Debtor(s).

6. The Debtor(s) is/are in default with regard to payments which have become due under the terms of the aforementioned note and deed of trust since the filing of the Chapter 13 Petition.

The Debtor(s) is/are due for:

- o 5 post petition monthly payments of \$549.96 each which were to be paid directly to Movant;

7. A proof of claim for pre-petition arrears was filed with this Court on Movant's behalf on April 5, 2010, in the amount of \$5,780.92.

8. Movant has elected to initiate foreclosure proceedings on the Property with respect to the subject Trust Deed but is prevented by the Automatic Stay from going forward with these proceedings.

9. Movant is informed and believes, and, based upon such information and belief, alleges that absent this Court's Order allowing this Movant to proceed with the pending foreclosure, Movant's security will be significantly jeopardized and/or destroyed.

11. Continuation of the automatic stay of 11 U.S.C. Section 362(a) will work real and irreparable harm and deprive Movant of the adequate protection to which it is entitled under 11 U.S.C. Section 362 due to the aforementioned facts.

12. Movant has requested that the Court hear this matter on June 16, 2010, at 11:00AM

WHEREFORE, Movant prays for an order granting relief from Automatic Stay in order to pursue its remedies under the terms of its Note and Deed of Trust, that the 14 day waiting period imposed by F.R.B.P. 4001(a)(3) be waived, for its attorneys fees and costs expended, and for such other and further relief as the Court and equity deem meet.

Dated: 5/18/10

SHAPIRO & BURSON, LLP
Attorneys for Movant

By: 

EDWARD S. JONES, VSB# 77729
SHAPIRO & BURSON, LLP
236 CLEARFIELD AVENUE, SUITE 215
VIRGINIA BEACH, VA 23462
(757) 687-8777
09-169446D

NOTICE OF MOTION AND HEARING

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then within FOURTEEN (14) days from the date of service of this motion, you must file a written response explaining your position with the Court at the following address: Clerk of Court, United States Bankruptcy Court, 701 East Broad Street, Room 4000, Richmond, VA 23219-3515, and serve a copy on the movant. Unless a written response is filed and served within this FOURTEEN day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the FOURTEEN day period.

Attend the preliminary hearing scheduled to be held on: June 16, 2010 at 11:00AM in Courtroom 5100, United States Bankruptcy Court, 701 East Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated: 5/18/10

SHAPIRO & BURSON, LLP
Attorneys for Movant

By: 

EDWARD S. JONES, VSB# 77729
SHAPIRO & BURSON, LLP
236 CLEARFIELD AVENUE, SUITE 215
VIRGINIA BEACH, VA 23462
(757) 687-8777

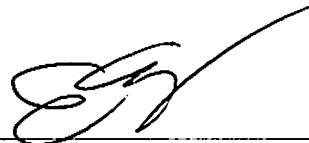
CERTIFICATE OF MAILING

I certify that I have this 18 day of May, 2010, electronically transmitted and/or mailed via first class mail, postage pre-paid, true copies of the above mentioned Motion for Order Granting Relief from Automatic Stay and Notice of Motion and Hearing to each party required to receive notice under Local Bankruptcy Rule 4001(a)-1(F)(1) as follows:

RUDOLPH C. MCCOLLUM, JR.
P.O. BOX 4595
RICHMOND, VA 23220

CARL M. BATES
P.O. BOX 1819
RICHMOND, VA 23218

RICHARD EARL SOUELS
2806 4TH AVE
Richmond, VA 23222



EDWARD S. JONES, ESQ.

09-169446D